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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,376	11/26/2003	Alan D. Olin	M-16842-4P US	8032
32605 7590 06/22/2007 MACPHERSON KWOK CHEN & HEID LLP 2033 GATEWAY PLACE SUITE 400 SAN JOSE, CA 95110			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 06/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/723,376		Applicant(s) OLIN ET AL.	
	Examiner Jes F. Pascua		Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24, 32 and 33 is/are pending in the application.
 4a) Of the above claim(s) 3, 5-9, 11, 12, 15, 17-21, 23 and 24 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1, 2, 4, 10, 13, 14, 16, 22, 32 and 33 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/09/2007 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "slider" (claims 1 and 13) must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claim language "non-gusseted portion" lacks antecedent basis in the terminology of the written specification.

Terminal Disclaimer

4. The terminal disclaimer filed on 03/09/2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,857,779 and U.S. Patent No. 7,011,448 has been reviewed and is NOT accepted.

5. The attorney or agent, not of record at the time of filing the 03/09/2007 terminal disclaimer, was not authorized to sign a terminal disclaimer in the capacity as an

attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a).

See 37 CFR 1.321(b) and/or (c).

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 2, 4, 10, 13, 14, 16, 22, 32 and 33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 6, 9-11 and 13 of U.S. Patent No. 6,857,779. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 6,857,779 contain every element of claims 1, 4, 10, 13, 16, 22, 32 and 33 of the present application and as such anticipates claims 1, 4, 10, 13, 16, 22, 32 and 33 of the present application.

Regarding claims 2 and 14, the claims of U.S. Patent No. 6,857,779 meet the claimed bag except for the bottom end being generally ovoid in shape. It would have been an obvious matter of design choice to make the bottom end of U.S. Patent No. 6,857,779 generally ovoid in shape or whatever shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

8. Claims 1, 2, 4, 10, 13, 14, 16, 22, 32 and 33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 4 of U.S. Patent No. 7,011,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 7,011,448 meet the claimed bag except for the bottom end having a generally ovoid shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom end of U.S. Patent No. 7,011,448 with a generally ovoid shape since it was known in the art that bags having a bottom end of generally ovoid shape permit the bag to be supported in an upright position.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 10, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,687,848 to Scholz et al. and U.S. Patent No. 3,417,675 to Ausnit.

Scholz et al. discloses a bag comprising a top end heat seal, a bottom end configured to support the bag in a generally upright position, opposing first and second non-gusseted side edges extending between the top and bottom ends and an opening located on the first side edge, proximate to the top end and closer to the top end than to the bottom end. See Fig. 12. The opening is made reclosable by magnetic fastener 152. Furthermore, Fig. 12 shows sealed portion 156 proximate to the top end. However, Scholz et al. does not disclose the reclosable magnetic fastener having a zipper. Ausnit teaches that it is known in the art provide reclosable magnetic fasteners as zippers. See Fig. 13. It would have been obvious to a person having ordinary skill in the art at the time the invention was claimed to provide the reclosable magnetic fastener of Scholz et al. as a zipper, taught to be desirable by Ausnit, in order to increase the sealing effect of the magnetic fastener.

11. Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al. and Ausnit, as applied in claims 1 and 13, and in further view of admitted prior art.

Scholz et al. and Ausnit meet the claimed bag, as discussed above, except for the bottom end being generally ovoid in shape. It would have been an obvious matter

Art Unit: 3782

of design choice to make the bottom end of Scholz et al. generally ovoid in shape or whatever shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. This statement is taken to be admitted prior art because applicant failed to traverse the statement in the remarks filed 03/09/2007.

12. Claims 1, 10, 13, 22, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,941,643 to Linkiewicz and U.S. Patent No. 6,007,246 to Kinigakis et al.

Linkiewicz discloses a lap sealed bag comprising a left, non-gusseted end, a right end having gusset 56, a top side 42 extending between the left and right ends and a bottom side 52 extending between the left and right ends. See Fig. 3. The Linkiewicz bag further comprises a pour spout opening located proximate to and oriented substantially parallel to the top side edge and is located closer to the left end than to the right end. The pour spout opening is made reclosable by fastener 48. In order to access the pour spout opening, Linkiewicz provides a tear strip that is removed along line of perforations 46. However, Linkiewicz does not show the left end of the lap sealed bag being heat sealed. Kinigakis et al. shows that a pour spout bag formed with a heat sealed left end is an equivalent structure to a lap sealed bag without a heat sealed left end. See Figs. 9 and 10 of Kinigakis et al. Therefore, because these two pour spout bags were art-recognized equivalents at the time the invention was made,

one of ordinary skill in the art would have found it obvious to form the bag of Linkiewicz with a heat sealed left end.

Applicant's nomenclature for the ends and sides of the claimed bag do not structurally define over the ends and sides of the Linkiewicz bag as discussed above. Furthermore, the gusset 56 in the right end of the Linkiewicz bag would render it capable of being supported on the right end.

Regarding claims 10 and 22, the seal collinear with the fastener 48 in Fig. 3 meets the recitation "a sealed portion proximate to the top end".

13. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linkiewicz and Kinigakis et al., as applied in claims 1 and 13, and in further view of U.S. Patent No. 3,387,701 to Schneider et al.

Linkiewicz and Kinigakis et al. disclose the claimed device, as discussed above, except for the top side and the left end having an included angle measuring less than 90 degrees. Schneider et al. discloses that it is known in the art to provide an included angle measuring less than 90 degrees between the top side and left end of another dispensing bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top side and left end of Linkiewicz with the included angle measuring less than 90 degrees as in Schneider et al., in order to facilitate dispensing contents from within the bag.

Response to Arguments

14. Applicant's arguments with respect to claims 1, 2, 4, 10, 13, 14, 16, 22, 32 and 33 have been considered but are moot in view of the new grounds of rejection.

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

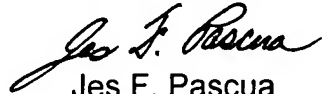
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone

Art Unit: 3782

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP